

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE:	Rita Joan Cole, Trustee	)
	Dist. 17, Map 37G, Group B, Control Map 37G,	) Sullivan County
	Parcel 5.00, S.I. 000	)
	Residential Property	)
	Tax Year 2005	)

**INITIAL DECISION AND ORDER**

**Statement of the Case**

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$31,200	\$398,500	\$429,700	\$107,425

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on April 12, 2006 in Blountville, Tennessee. In attendance at the hearing were Benton G. Cole, and Sullivan County Property Assessor's representative, Glendora Maines.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Subject property consists of a single family residence with a guest house located at 117 Pendleton Drive in Bristol, Tennessee.

The taxpayer contended that subject property should be valued at \$401,700. In support of this position, the taxpayer argued that the 2005 countywide reappraisal program caused the appraisal of subject property to increase excessively. The taxpayer maintained that the following factors support a reduction in value: (1) the original purchase price on November 28, 1998 was \$380,000 and included three lots; (2) a fee appraiser appraised subject property (with 1 lot) at \$340,000 as of October 31, 2001; (3) the Sullivan County Board of Equalization reduced the appraisal of the guest house in 2004 to \$50,900 whereas it is currently appraised at \$59,721; (4) the actual cost to construct the guest house was \$49,634; (5) the primary residence could be constructed today at a cost of \$299,438; and (6) local realtors have indicated "a modest 3% increase in value during the past four (4) years."

The assessor contended that subject property should be valued at \$459,100. In support of this position, the assessor introduced a rather voluminous exhibit prepared by the recently retired reappraisal coordinator, Rudy Brown. Mr. Brown's exhibit essentially contained six (6) comparable sales and various documents summarizing the appraisal history of subject property. Mr. Brown asserted that subject land has been erroneously appraised from 2002 to 2005 and should be appraised at \$57,917. Mr. Brown also noted in the narrative portion of his exhibit that the appraisal of the guest house was prorated by the Sullivan County Board of Equalization in 2004 because it was considered incomplete for property tax purposes.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should remain valued at \$429,700 based upon the presumption of correctness attaching to the decision of the Sullivan County Board of Equalization.

Since the taxpayer is appealing from the determination of the Sullivan County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

As will be discussed below, the administrative judge finds that the taxpayer introduced insufficient evidence to establish subject property's fair market value as of January 1, 2005, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a). Indeed, Mr. Cole candidly stated that he had "no idea" what subject property would sell for if offered for sale.

The administrative judge finds that the fair market value of subject property as of January 1, 2005 constitutes the relevant issue. The administrative judge finds that the Assessment Appeals Commission has repeatedly rejected arguments based upon the amount by which an appraisal has increased as a consequence of reappraisal. For example, the Commission rejected such an argument in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) reasoning in pertinent part as follows:

The rate of increase in the assessment of the subject property since the last reappraisal or even last year may be alarming but is not evidence that the value is wrong. It is conceivable that values may change dramatically for some properties, even over so short of time as a year. . .

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value. . . .

#### Final Decision and Order at 2.

The administrative judge finds that the taxpayer's purchase of subject property in 1998 and the 2001 appraisal lack probative value given a January 1, 2005 assessment date. The administrative judge finds that much more recent sales would normally be utilized to establish subject property's fair market value.

The administrative judge finds that even if it is assumed arguendo that a reliable conclusion of value cannot be derived from comparable sales due to a lack of sales in the immediate area, the taxpayer's "cost approaches" do not comport with generally accepted appraisal practices in certain significant respects. Most importantly, the administrative judge finds that entrepreneurial profit has not been accounted for. As explained in one authoritative text:

When the direct and indirect costs of developing a property are used to provide an indication of value, the appraiser must also include an economic reward sufficient to induce an entrepreneur to incur the risk associated with a building project. For a completed project at stabilization, the difference between the sum of direct and indirect costs and the market value of the property is the entrepreneurial profit (or loss) realized:

$$\begin{array}{r} \text{Market Value} \\ - \quad \text{Total Cost of Development} \\ \hline \text{Entrepreneurial Profit (or Loss)} \end{array}$$

In other words, to solve for profit the appraiser may compare market value and the value indicated by the cost approach without profit. Whether or not a profit is actually realized depends on how well the entrepreneur has analyzed the market demand for the property, selected the site, and constructed the improvements. . . .

Appraisal Institute, *The Appraisal of Real Estate* at 360. Moreover, Mr. Cole's background in construction enables him to avoid certain direct and indirect costs normally incurred by the typical buyer. The same text summarizes the costs customarily included in a cost approach as follows:

To develop cost estimates for the total building, appraisers must consider direct (hard) and indirect (soft) costs. Both types of cost are essential to a reliable cost estimate. . . .

Direct construction costs include the costs of material and labor as well as the contractor's profit required to construct the improvement on the effective appraisal date. The overhead and profit of the general contractor and various subcontractors are part of the usual construction contract and, therefore, represent direct costs that should always be included in the cost estimate. . . . Indirect costs are expenditures or allowances that are necessary for construction but are not typically part of the construction contract.

\* \* \*

**Table 14.1** Direct Costs and Indirect Costs

---

**Direct Costs**

- Building permits
- Materials, products, and equipment
- Labor used in construction
- Equipment used in construction
- Security during construction
- Contractor's shack and temporary fencing
- Material storage facilities
- Power line installation and utility costs
- Contractor's profit and overhead, including job supervision; coordination and management (when appropriate); worker's compensation; and fire, liability, and unemployment insurance
- Performance bonds

**Indirect Costs**

- Architectural and engineering fees for plans, plan checks, surveys to establish building lines and grades, and environmental studies
- Appraisal, consulting, accounting, and legal fees
- The cost of carrying the investment in land and contract payments during construction
- All-risk insurance expense and ad valorem taxes during construction
- The cost of carrying the investment in the property after construction is complete but before stabilization is achieved
- Supplemental capital investment in tenant improvements and leasing commissions
- Marketing costs, sales commissions, and any applicable holding costs to achieve stabilized occupancy in a normal market
- Administrative expenses of the developer

Id. at 358-59.

The administrative judge finds the decision of the Sullivan County Board of Equalization to value the guest house in 2004 at \$50,900 irrelevant for at least two reasons. First, the local board obviously had a different view in 2005 when it set the current appraisal of subject property. Second, it appears from the assessor's proof that the guest house was appraised as incomplete in 2004 and the \$50,900 value was a prorated value.

The administrative judge finds that the local realtors referred to by Mr. Cole were not present to testify or undergo cross-examination. Furthermore, it is not even clear what data the realtors might have considered in arriving at their estimates. The administrative judge finds such hearsay has no probative value.

The administrative judge finds that just as the taxpayer has the burden of proof to support a reduction in value, the assessor has the burden to support an increased value.

Respectfully, the administrative judge finds the assessor introduced insufficient evidence to support an increased appraisal. The administrative judge finds that the assessor's sales were not adjusted in accordance with generally accepted appraisal practices.

Given the foregoing, the administrative judge finds that the current appraisal of \$429,700 should remain in effect based upon the presumption of correctness attaching to the decision of the Sullivan County Board of Equalization.

#### ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$31,200	\$398,500	\$429,700	\$107,425

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 20th day of April, 2006.

  
\_\_\_\_\_  
MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Benton G. Cole  
Bob Icenhour, Assessor of Property